

TOWN OF OPHIR, RESOLUTION 94-5

A RESOLUTION DECLARING AN INTENT TO CONSUMMATE A LAND TRADE TRANSACTION FOR THE PURPOSE OF PRESERVING AS OPEN SPACE CERTAIN LANDS SITUATED IN WATERFALL CANYON.

Whereas, the Town of Ophir's Master Plan, adopted September 21st, 1993, by the General Assembly, states in Section 2.6 that it is a goal to provide for the recreational and open space needs of the residents of the Town, and that it is an objective to maintain open space that preserves and enhances the natural environment within and surrounding the Town, and that it is the policy to provide active and passive recreation areas within and surrounding the Town for recreational needs defined by Town residents;

Whereas, the General Assembly finds that it is in the interests of the Health, Safety, and Welfare of the Ophir community to pursue the transaction described below; and,

Whereas, Resolution 94-4 did not accurately reflect the terms as negotiated between the parties;

NOW, THEREFORE, BE IT RESOLVED BY THE GENERAL ASSEMBLY OF THE TOWN OF OPHIR, COLORADO, the following:

SECTION 1. INTENT TO CONSUMMATE WATERFALL CANYON LAND TRADE

The General Assembly resolves to consummate the following described transaction (hereinafter referred to as the "Waterfall Canyon Land Trade") with Cariboo Partners, and Keith Williams and Robert Bristol, individually (hereinafter collectively referred to as "Williams/Bristol") and hereby directs Town staff to prepare all necessary documents and take all necessary actions to accomplish the purpose and intent of this Resolution upon written acceptance by Williams/Bristol as to the terms of this Intent to Consummate Waterfall Canyon Land Trade. The terms of this Resolution supersede and replace the terms of Resolution 94-4.

SECTION 2. TERMS OF WATERFALL CANYON LAND TRADE

A. Williams/Bristol agree to transfer property as described in the Warranty Deed recorded with the San Miguel County Recorder, Book 510, Page 521, to the Town of Ophir. The property rights transferred shall be of sufficient interest to insure the property is preserved and maintained as undeveloped open space. In the event that the transfer to the Town of Ophir does not qualify for tax exempt status and other tax benefits for Williams/Bristol, the property may be transferred to some other tax qualifying organization approved by both Williams/Bristol and the Town of Ophir. Williams/Bristol agree to transfer the property for the purposes of this section on June 21st, 1994, or as soon thereafter as possible.

B. The Town of Ophir agrees to transfer to Williams/Bristol 10 contiguous town-owned lots described in Block 11, exact Lots to be determined by Williams/Bristol. The Town of Ophir agrees to vacate the right-of-way West of, and adjacent to, Block 11, and transfer the the Town's interest in the vacated right-of-way to Williams/Bristol. The Town of Ophir and Williams/Bristol agree to take any necessary action to limit the number of building sites on the property transferred to Williams/Bristol to four single family detached dwelling units and accessory uses, including deed restrictions, covenants, replatting or creation of a zone district. The permitted land use shall otherwise be governed by the residential district regulations generally applied within the Town of Ophir as may be amended from time to time. Williams/Bristol agree that an 'inclusion fee' of \$5,500 (five thousand five hundred dollars) shall be payable to the East Ophir Improvement District Fund for each building site prior to obtaining a building permit for a dwelling structure, and such obligation shall run with the land.

C. The Town of Ophir agrees to adjust the boundary of the Avalanche Hazard Zone on the West side of Block 11 to the actual hazard boundary as delineated on the "Avalanche Hazard Map" prepared by INSTAAR under NASA-PY, prior to conveyance.

D. Williams/Bristol may plant trees, shrubs, and other vegetation in the Avalanche Hazard Zone on the Town-owned property transferred to them.

E. The Town of Ophir agrees to not allow or approve any transfer of density which is allowed, by right or review, elsewhere in the Town of Ophir to Town owned land in the remainder of Block 11 or to Blocks adjacent to Block 11. The Town of Ophir also agrees to restrict future development of town-owned land on Block 11 and block adjacent to Block 11 to single family detached dwelling units of a density no greater than one dwelling unit per 5,000 sq.ft. This restriction shall not prohibit the Town of Ophir from selling town-owned land for budgetary purposes, developing town-owned land for municipal purposes, or selling or trading town-owned land for the acquisition of open space outside the Town boundaries and in the Ophir Valley region.

F. Williams/Bristol may transfer land acquired from the Town of Ophir to a partner or partners of a partnership, or to a partnership or partnerships, of which Keith Williams or Robert Bristol is a partner, or has an interest in a partnership interest, one time without any obligation to the Town of Ophir for the Town's Real Estate Transfer Tax if such transfer is completed within two years of acquiring town-owned land. All partners shall be disclosed to the Town upon completing this land trade.

G. The Town of Ophir agrees to annex Lot 4 of the Sara Placer and the Montezuma Millsite upon petition for annexation to the Town of Ophir with the following land use restrictions and development rights:

(1) The annexed property may be subdivided into four residential lots, such subdivision shall comply with any subdivision regulations adopted by the Town of Ophir except as otherwise provided in this part G, and all structures shall be located on the South side of the Howard's Fork river.

(2) The annexed property shall not be required to be served by the Town of Ophir's water system.

(3) Structures on two of the lots will be restricted to a total maximum of 7,000 sq.ft. of floor area (including accessory buildings or structures) for each lot regardless of whether the property is annexed to the Town or not. Such restriction shall be in the form of a covenant or restrictive easement deeded to the Town. Development on the two lots shall comply with any exterior building material and exterior lighting regulations of the Town of Ophir. The Town of Ophir shall otherwise apply the land use regulations of the San Miguel County Land Use Code Forestry, Agriculture and Open zone district as written on April 15th, 1994, to development of the two lots.

(4) Use and development on two of the lots will be governed by the Town of Ophir's General Regulations and Residential Zone District Regulations.

(5) Town agrees not to oppose development activities in wetlands or wetland buffer zones upon verification by a mutually agreed upon wetlands professional or expert that the proposed development activity will not adversely affect wetlands.

(6) The Town of Ophir and Williams/Bristol agree to cooperate to create a trail access across the annexed property in the general area of the sluiceway currently crossing the property and to the Waterfall Canyon area provided neither the Town of Ophir nor Williams/Bristol incurs any liability associated with any trail construction, improvements, or use.

(7) William/Bristol agree to dedicate a 50 foot wide right-of-way to the Town of Ophir along the East boundary of Lot 4 of the Sara Placer. The Town of Ophir agrees to enter into a re-imbusement agreement with Williams/Bristol for the proportionate sharing of access development costs which benefits the Town of Ophir. The proportionate sharing of costs shall be determined by the number of building sites served and each share shall be payable by the owner of the property prior to obtaining a building permit for a dwelling structure.

(8) Williams/Bristol may transfer undeveloped annexed property or individual lots to a partner or partners of a partnership, or to a partnership or partnerships, of which Keith Williams or Robert Bristol is a partner, or has an interest in a partnership interest, one time without any obligation to the Town of Ophir for the Town's Real Estate Transfer Tax if such transfer is completed within two years of final approval of the annexation. All partners shall be

disclosed to the Town upon completing this land trade.

(9) Williams/Bristol agrees to pay all legal fees associated with annexation of Lot 4 of the Sara Placer and the Montezuma Mill Site.

SECTION 3. APPROVAL OF GENERAL ASSEMBLY REQUIRED

Consummation of the Waterfall Canyon Land Trade will require the approval of various ordinances by the General Assembly. This resolution in no way expresses whether necessary ordinances will be approved by the General Assembly.

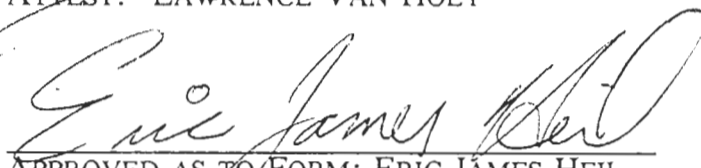
HEARD, APPROVED, AND ADOPTED BY THE GENERAL ASSEMBLY OF THE TOWN OF OPHIR THIS 17TH DAY OF MAY, 1994.


BY: PAUL MACHADO, TOWN MANAGER

5/18/94
DATE


ATTEST: LAWRENCE VAN HOEY

5/18/94 TOWN
DATE SEAL


APPROVED AS TO FORM: ERIC JAMES HEIL
TOWN ATTORNEY

5/18/94
DATE